

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

LIBERTY WOODS INTERNATIONAL, INC.,	:	
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
THE M/V OCEAN QUARTZ, her engines, tackle,	:	
appurtenances, etc. <u>in rem</u> , and	:	
DALIA SHIP HOLDING SA, in personam	:	
Defendants.	:	

DEFENDANTS' VERIFIED ANSWER TO COMPLAINT

Defendant Dalia Ship Holding S.A. ("Dalia") appearing *in personam*, ' by and through their undersigned counsel, Palmer Biezup & Henderson LLP, and without waiver of or prejudice to the mandatory jurisdiction / forum selection contained in the applicable SK Shipping Company Ltd. Bills of Lading, answers Plaintiffs' Complaint as set forth below.

Dalia Ship Holding S.A. ("Dalia") having filed a Verified Statement of Right or Interest in the defendant vessel M/V OCEAN QUARTZ pursuant to Rules C(6) and E(8) of the Supplemental Rules for Certain Admiralty and Maritime Claims, as owner of the M/V OCEAN QUARTZ for the sole purpose of defending claims asserted in this action by the plaintiff against the M/V OCEAN QUARTZ *in rem*, said claim of owner and *in rem* appearance having been being expressly restricted under Rule E(8) and limited and subject to all terms, conditions, limitations, and reserved defenses set forth in a certain Letter of Undertaking issued on May 10, 2013¹ to the plaintiff as security for its *in rem* claim in lieu of the arrest of the vessel,

¹ A true and correct copy of said Letter of Undertaking dated May 10, 2013 was attached to and made a part of the Verified Statement of Interest filed on February 1, 2016 as Exhibit "A". (See Doc. 3).

by and through its counsel, Palmer Biezup & Henderson LLP, and without waiver of or prejudice to the mandatory jurisdiction / forum selection clause contained in the applicable SK Shipping Company Ltd. Bills of Lading, answers plaintiff's Complaint *in rem* (herein after "Complaint") as claimant to the M/V OCEAN QUARTZ, as set forth below.

1. Denied. The averments contained in paragraph 1 of the Complaint relating to jurisdiction, rules and statutes that purportedly apply to Plaintiff's claim, and the characterization of Plaintiff's claims are conclusions of law and are, therefore, denied. All remaining averments contained in paragraph 1 of the Complaint are denied.

2. Denied. The averments contained in paragraph 2 of the Complaint relating to jurisdiction are conclusions of law and are, therefore, denied. All remaining averments contained in paragraph 2 of the Complaint are denied.

3. Denied. Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 3 of the Complaint and, therefore, deny the same.

4. Denied as stated. It is admitted that at all material times the M/V OCEAN QUARTZ was an ocean going bulk cargo vessel and, except as specifically admitted herein, the averments contained in paragraph 4 of the Complaint are denied.

5. Denied as stated. It is admitted that at all material times Dalia Ship Holding S.A. was a foreign corporation or business entity and was the registered owner of the vessel M/V OCEAN QUARTZ and, except as specifically admitted herein, the averments contained in paragraph 5 of the Complaint are denied and the averments contained in "Schedule A" to the Complaint are denied.

6. Denied as stated. It is admitted that in the ports of Tanjung Manis, Malaysia, Bintulu, Malaysia and Samarinda, Indonesia certain cargoes of wood products inside crates were loaded and stowed aboard the M/V OCEAN QUARTZ by certain shippers and/or cargo interests for carriage to the Port of Camden, New Jersey and bill of lading numbers SKSMTMCA00211000 through SKSMTMCA00228000 dated December 12, 2012, bill of lading numbers SKSMBICA00615000 through SKSMBICA 00630000 dated December 17, 2012, and bill of lading numbers SKSMSMCA00109000 through SKSMSMCA00154000 dated December 31, 2012 were issued by SK Shipping Co., Ltd. in connection with said shipments of said cargoes and, except as specifically admitted herein, the averments contained in paragraph 6 of the Complaint are denied and the averments contained in "Schedule A" to the Complaint are denied.

7. Denied.

8. Denied. Answering defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 8 of the Complaint and, therefore, deny the same.

9. Denied.

10. Denied.

WHEREFORE, answering defendant Dalia Ship Holding S.A., appearing *in personam* demands judgment in its favor and against Plaintiff Liberty Woods International, Inc., along with the dismissal of Plaintiff's Complaint with prejudice at Plaintiff's cost and such other and further relief as this Honorable Court may deem proper and just under the circumstances.

WHEREFORE, answering defendant Dalia Ship Holding S.A., appearing as owner of the M/V OCEAN QUARTZ and subject to its restricted appearance and Verified Statement of Right

or Interest filed of record herein, demands judgment in its favor and against Plaintiff Liberty Woods International, Inc., along with the dismissal of Plaintiff's Complaint with prejudice at Plaintiff's cost and such other and further relief as this Honorable Court may deem proper and just under the circumstances.

FIRST AFFIRMATIVE DEFENSE

Any claim for or arising out of the loss or damage alleged in the Complaint is subject to the mandatory jurisdiction / forum selection clause set forth in Clause 33 of all bills of lading referenced in Schedule "A" attached to Plaintiff's Complaint. This lawsuit must be dismissed based on, *inter alia*, the doctrine of *forum non conveniens* pursuant to the mandatory and exclusive jurisdiction Clause 33 contained in the bills of lading which are the subject of Plaintiff's Complaint which states in pertinent part as follows:

"33. (Jurisdiction): Any claim, dispute, suit, or action concerning goods carried under this Bill of Lading, whether based upon breach of contract, tort, or otherwise shall be brought before the Seoul District Court in Korea."

A copy of the terms and conditions set forth the back of the subject Bills of Lading is attached hereto as composite Exhibit "A". An enlargement of Clause 33 is attached as Exhibit "B."

SECOND AFFIRMATIVE DEFENSE

The Complaint fails to state a claim against Answering Defendants for which relief can be granted.

THIRD AFFIRMATIVE DEFENSE

Defendants claim benefit of all rights, limitations, and defenses provided by the United States Carriage of Goods by Sea Act of 1936, 46 U.S.C. § 1300 *et seq.*, (46 U.S.C.S. §30701 *et seq.*) the Harter Act of 1893, 46 U.S.C. § 190 *et seq.* (46 U.S.C.S. §30701 *et seq.*), the Limitation of Liability Act of 1851 (46 U.S.C. §§ 30501 - 30512), the Hague Rules 1924 (Brussels

Convention) (Articles 1 through 8 et seq.), and any other international convention referenced in the bill of lading and/or applicable as a matter of law to the subject shipments, all of which are incorporated herein by reference.

FOURTH AFFIRMATIVE DEFENSE

The damages alleged in Complaint, if they occurred, which is denied, were caused in whole or in part by acts, errors, omissions, negligence, breach of warranty or breach of contract of other parties for whom Answering Defendants are not responsible including, but not limited to the Plaintiff, the shippers, the consignees, and/or their respective agents, servants or employees.

FIFTH AFFIRMATIVE DEFENSE

Due diligence was used to make the M/V OCEAN QUARTZ seaworthy and to insure that it was properly manned, equipped, and supplied and to make the holds, decks and all other parts of the vessel in which the cargo was carried safe and fit for the cargo's reception, carriage, and preservation in accordance with all applicable contracts and statutes. Accordingly, if the cargo sustained any loss or damage while on board the vessel due to any unseaworthiness of the vessel, which is denied, Defendants can have no liability for such loss or damage.

SIXTH AFFIRMATIVE DEFENSE

Any liability of Answering Defendants, such liability being specifically denied, is limited by the United States Carriage of Goods by Sea Act of 1936, 46 U.S.C. § 1300 *et seq.*, (46 U.S.C.S. §30701 et seq.) to \$500 per package or customary freight unit and/or by the per package or customary freight unit limitation provision contained in any other applicable law or international convention.

SEVENTH AFFIRMATIVE DEFENSE

Answering Defendants claim the benefit of all defenses which may be available to them under the terms of bill of lading numbers SKSMTMCA00211000 through SKSMTMCA00229000, SKSMBICA00615000 through SKSMBICA 00630000, and SKSMSMCA00109000 through SKSMSMCA00154000, and any other applicable contracts, charter parties, bills of lading, or other agreements or tariffs, including, but not limited to, time bars, failure to give proper notice, forum selection clauses, jurisdiction clauses, arbitration clauses, applicable law clauses, and any other applicable defenses. Specifically, Defendants incorporate by reference all defenses set forth in terms and conditions set forth on the front and reverse sides of the applicable bills of lading referenced in the LOU issued on May 10, 2013 and attached to the Verified Statement of Claim.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff has failed to mitigate its alleged damages and losses in this matter.

NINTH AFFIRMATIVE DEFENSE

The subject vessel, the M/V OCEAN QUARTZ was, at all material times, tight, staunch, strong and seaworthy.

TENTH AFFIRMATIVE DEFENSE

Answering Defendants did not owe Plaintiff any duty or warranty under the law or pursuant to the contract of carriage or otherwise and did not breach any duty or warranty.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the applicable statutes of limitations, including, but not limited to, limitation periods in the applicable Bills of Lading and in United States Carriage of Goods by Sea Act of 1936, 46 U.S.C. § 1300 *et seq.*, (46 U.S.C.S. §30701 *et seq.*).

TWELFTH AFFIRMATIVE DEFENSE

The cargo which is the subject matter of the Complaint was allegedly received, loaded and carried pursuant to the terms and conditions of the Bills of Lading issued by SK Shipping Co., Ltd. and Answering Defendants incorporate herein by reference all terms and provisions of the aforementioned Bills of Lading, the terms and provisions of any contracts incorporated by reference in said Bills of Lading and/or any other contracts applicable to the shipment, and specifically including, but not limited to, all defenses, limitations, notice provisions, United States Carriage of Goods by Sea Act defenses and limitations, package limitations, liberties clauses, etc. contained in said contracts.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiff may not be the real party in interest and/or lacks standing to sue in respect of the claims asserted in this action and, therefore, the Complaint must be dismissed.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiff assumed the risk of any alleged damages or losses.

FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are also barred by the equitable doctrines of laches, estoppel and waiver, unclean hands, and/or other equitable defenses.

SIXTEENTH AFFIRMATIVE DEFENSE

The Complaint should be dismissed on the grounds that Plaintiff has failed to join an indispensable party under Rule 19 of the Federal Rules of Civil Procedure.

SEVENTEENTH AFFIRMATIVE DEFENSE

Recovery is barred to the extent that any loss or damage alleged in the Complaint arose or resulted from perils, dangers, and accidents of the sea or other navigable waters; or from acts of God; or from any reasonable and/or agreed deviation.

EIGHTEENTH AFFIRMATIVE DEFENSE

Any loss or damage alleged in the Complaint, said loss or damage being denied, did not arise or result from any actual fault, knowledge, privity, or neglect of the carrier, its agents, or servants, and recovery is therefore barred.

NINETEENTH AFFIRMATIVE DEFENSE

Plaintiff's alleged losses were caused by the negligent and/or intentional conduct of Plaintiff, Plaintiff's contractors, the shippers, the shippers' contractors, consignees, consignees' contractors, receivers, receivers' contractors, and/or other persons for whom Defendants have no responsibility.

TWENTIETH AFFIRMATIVE DEFENSE

If any loss or damage to the cargo, as alleged in the Complaint, occurred while the cargo was on board the M/V OCEAN QUARTZ, which is denied, and if it be determined that the loss or damage arose or resulted from a latent defect in said vessel or its equipment, Defendants cannot be held liable for such loss or damage.

TWENTY-FIRST AFFIRMATIVE DEFENSE

If any loss or damage to the cargo, as alleged in the Complaint, occurred while the cargo was on board the M/V OCEAN QUARTZ, which is denied, and if it be held that the loss or damage arose or resulted from an act, neglect, or default of the Master, mariner, pilots, or

servants of the carrier in the navigation or management of the vessel, which is denied, Defendants cannot have any liability for such loss or damage.

TWENTY-SECOND AFFIRMATIVE DEFENSE

In the event there is any loss of damage to the cargo as alleged in the Complaint, which is denied, such loss or damage arose or resulted from the condition of the cargo when delivered or from an inherent defect, quality or vice of the goods or insufficiency of packaging, insufficient protection, or by act or omission of the shipper, consignee, or owners of the goods, their agents or representatives, including but not limited to, acts or omissions of the shipper's representative at the location where the cargo was loaded, and acts or omissions at the ports of loading and/or discharge and, therefore, Defendants have no liability in this matter.

TWENTY-THIRD AFFIRMATIVE DEFENSE

If there was any loss or damage to the cargo as alleged in the Complaint, which is denied, such loss or damage arose or resulted from Plaintiff's failure to use due care under the circumstances in shipping its cargo, including, but not limited to, negligent storage, handling, carriage, and transportation of the cargo prior to shipment aboard the M/V OCEAN QUARTZ, and negligently failing to provide proper and/or adequate carriage instructions and, therefore, Defendants are not liable.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

If there was any loss or damage to the cargo as alleged in the Complaint, which is denied, such loss or damage arose or resulted from the negligent packing, packaging, stuffing, and/or protection of the cargo for the anticipated voyage by Plaintiff, shippers, consignees and/or receivers and/or their respective agents.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

To the extent that the claims stated in the Complaint are governed by the substantive laws of a foreign nation, Defendant hereby gives notice of its intention to rely on foreign law.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

Notice of the alleged damage to cargo was not given within three (3) days after discharge and, therefore, under the Carriage of Goods by Sea Act of 1936, 46 U.S.C. § 1300 *et seq.*, (46 U.S.C.S. §30701 *et seq.*) and/or other applicable laws, it must be presumed that no damage occurred during carriage.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

At all times material hereto, Defendants acted with reasonable care, did not breach any duty, and complied with all carriage and stowage instructions provided by Plaintiff, the shippers consignees and/or receivers and/or their respective agents.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

If there was any loss or damage to the cargo as alleged in the Complaint, which is denied, such loss or damage arose or resulted from the negligence of the Plaintiff, shippers, consignees and/or receivers and their respective agents.

TWENTY-NINTH AFFIRMATIVE DEFENSE

At all material times Defendant Dalia Ship Holding S.A. was not a party to any alleged contract of carriage, was never in privity of contract with Plaintiff, and did not operate or control the subject vessel.

THIRTIETH AFFIRMATIVE DEFENSE

This lawsuit must be dismissed pursuant to the mandatory/exclusive law and jurisdiction and/or exclusive arbitration clause(s) contained in any applicable bills of lading, tariffs, charter parties, service contracts and or other applicable contracts of carriage.

THIRTY-FIRST AFFIRMATIVE DEFENSE

This Honorable Court lacks *in personam* jurisdiction over Defendant Dalia Ship Holding S.A. and, therefore, the *in personam* claim in the Complaint must be dismissed.

THIRTY-SECOND AFFIRMATIVE DEFENSE

Venue is improper and, therefore, this matter must be dismissed.

THIRTY-THIRD AFFIRMATIVE DEFENSE

Plaintiff failed to timely file its action in the Seoul District Court, Korea, as required under the applicable forum selection / jurisdiction clause and therefore Plaintiff's claim is time-barred under the applicable statute of limitations.

THIRTY-FOURTH AFFIRMATIVE DEFENSE

The Complaint is barred, in whole or in part, by the doctrines of contributory and/or comparative negligence.

THIRTY-FIFTH AFFIRMATIVE DEFENSE

Answering defendant claims benefit of all defenses and limitations available to it pursuant to all applicable Himalaya clauses contained in bills of lading or other contracts deemed applicable to the transportation of the subject cargo.

THIRTY-SIXTH AFFIRMATIVE DEFENSE

This lawsuit should be dismissed on the basis of the doctrine of *forum non conveniens* because the applicable bills of lading contain a mandatory jurisdiction / forum selection clause requiring that all claims, suits or actions be brought in the Seoul District Court, Korea.

THIRTY-SEVENTH AFFIRMATIVE DEFENSE

At all times material hereto Defendant Dalia Ship Holding S.A. was not a carrier of the cargo which is the subject matter of the Complaint.

THIRTY-EIGHTH AFFIRMATIVE DEFENSE

Defendants did not owe Plaintiff any duty or warranty under the law or pursuant to contract and did not breach any contractual or legal duty or warranty.

THIRTY-NINTH AFFIRMATIVE DEFENSE

There is an absence of privity of contract between the vessel *in rem* and Plaintiff and therefore, the Complaint should be dismissed.

FORTIETH AFFIRMATIVE DEFENSE

There is no actual knowledge, privity, and/or fault of Defendants and, therefore, this action must be dismissed.

FORTY-FIRST AFFIRMATIVE DEFENSE

Defendants reserve their right to add those defenses which they deem necessary to their defense during or upon the conclusion of investigation and discovery.

WHEREFORE, answering defendant Dalia Ship Holding S.A., appearing *in personam* demands judgment in its favor and against Plaintiff Liberty Woods International, Inc., along with

the dismissal of Plaintiff's Complaint with prejudice at Plaintiff's cost and such other and further relief as this Honorable Court may deem proper and just under the circumstances.

WHEREFORE, answering defendant Dalia Ship Holding S.A., appearing as owner of the M/V OCEAN QUARTZ and subject to its restricted appearance and Verified Statement of Right or Interest filed of record herein, demands judgment in its favor and against Plaintiff Liberty Woods International, Inc., along with the dismissal of Plaintiff's Complaint with prejudice at Plaintiff's cost and such other and further relief as this Honorable Court may deem proper and just under the circumstances.

PALMER BIEZUP & HENDERSON LLP

By: /s/ Charles P. Neely, Esquire

Charles P. Neely
330 Market Street
Camden, NJ 08102
cneely@pbh.com
856-428-7717

Attorneys for Dalia Ship Holding S.A.
As Claimant of Defendant Vessel
M/V OCEAN QUARTZ, *in rem*

Of Counsel:

Richard Q. Whelan
Palmer Biezup & Henderson LLP
190 N. Independence Mall West, Suite 401
Philadelphia, PA 19106
215-625-7806
rwhelan@pbh.com
Attorneys for Dalia Ship Holding S.A.
As Claimant of Defendant Vessel
M/V OCEAN QUARTZ, *in rem*

Dated: February 12, 2016

ATTORNEYS' VERIFICATION

Charles P. Neely, Esq., being duly sworn, deposes and says:

1. I am an associate in the law firm of Palmer, Biezup & Henderson LLP, counsel for claimant Dalia Ship Holding S.A., the registered owner of the M/V OCEAN QUARTZ;
2. I am authorized to make this Verification on behalf of Dalia Ship Holding S.A.;
3. I have read the attached Answer to Complaint and know the contents thereof, and the same are true and correct based upon my investigation and the information and documents provided to me by or on behalf of Dalia Ship Holding S.A.;
4. Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct.
5. Executed this 12th day of February, 2016.


/s/ Charles P. Neely
Charles P. Neely

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 12th day of February, 2016, a true and correct copy of the foregoing Verified Answer to Complaint was filed through the CM/ECF system and served by email on the following counsel of record:

Craig S. English, Esquire
Kennedy Lillis Schmidt & English
75 Maiden Lane, Suite 402
New York, New York 10038
cenglish@klselaw.com

By: /s/ Charles P. Neely
Charles P. Neely

A small white label with the word "EXHIBIT" printed vertically and a large letter "A" in the center.[illegible]

